

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA (RICHMOND)

In re) Case No. 08-35653-KRH
CIRCUIT CITY STORES, INC.,)
et al.,)
Debtors.) June 16, 2016
11:02 AM

TRANSCRIPT OF HEARING

MOTION TO WITHDRAW ATTORNEY FILED BY JOHN DARREN SADLER OF
BALLARD SPAHR LLP ON BEHALF OF BERKSHIRE-AMHERST, LLC.

NOTICE OF SUBSTANTIVE HEARING ON LIQUIDATING TRUSTEE'S
FOURTEENTH OMNIBUS OBJECTION TO CLAIMS (RE: RELATED
DOCUMENT(S) 10052 OBJECTION TO CLAIM FILED BY CIRCUIT CITY
STORES, INC. LIQUIDATING TRUST)

NOTICE OF SUBSTANTIVE HEARING ON LIQUIDATING TRUSTEE'S FOURTH
OMNIBUS OBJECTION TO CLAIMS (RE: RELATED DOCUMENT(S) 10041
OBJECTION TO CLAIM FILED BY CIRCUIT CITY STORES, INC.
LIQUIDATING TRUST)

STATUS HEARINGS RE: NOTICE AND OBJECTION TO CLAIM OF
COMMONWEALTH OF VIRGINIA DEPARTMENT OF TAXATION LIQUIDATING
TRUST'S OBJECTION TO CLAIM NOS. 12898 AND 14636 FILED BY THE
COMMONWEALTH OF VIRGINIA DEPARTMENT OF TAXATION (DOCKET NO.
10070); NOTICE AND OBJECTION TO CLAIM - LIQUIDATING TRUST'S
FIRST OMNIBUS OBJECTION TO LANDLORD CLAIMS (REDUCTION OF
CERTAIN PARTIALLY INVALID CLAIMS, RECLASSIFICATION OF CERTAIN
MISCLASSIFIED CLAIMS, DISALLOWANCE OF CERTAIN INVALID CLAIMS,
DISALLOWANCE OF CERTAIN OF LATE FILED CLAIMS, DISALLOWANCE OF
CERTAIN AMENDED CLAIMS AND DISALLOWANCE OF CERTAIN INVALID
CLAIMS) (DOCKET NO. 10024); NOTICE AND OBJECTION TO CLAIM -
LIQUIDATING TRUST'S SECOND OMNIBUS OBJECTION TO LANDLORD
CLAIMS (REDUCTION OF CERTAIN PARTIALLY INVALID CLAIMS, CLAIMS,
DISALLOWANCE OF CERTAIN INVALID CLAIMS, DISALLOWANCE OF
CERTAIN OF LATE FILED CLAIMS, AND DISALLOWANCE OF CERTAIN
AMENDED CLAIMS) (DOCKET NO. 10039); NOTICE AND OBJECTION TO
CLAIM - LIQUIDATING TRUST'S THIRD OMNIBUS OBJECTION TO
LANDLORD CLAIMS (REDUCTION OF CERTAIN PARTIALLY INVALID
CLAIMS, RECLASSIFICATION OF CERTAIN MISCLASSIFIED CLAIMS,
DISALLOWANCE OF CERTAIN INVALID CLAIMS, DISALLOWANCE OF
CERTAIN DUPLICATE CLAIMS, AND DISALLOWANCE OF CERTAIN AMENDED
CLAIMS) (DOCKET NO. 10040); NOTICE AND OBJECTION TO CLAIM -

LIQUIDATING TRUST'S FOURTH OMNIBUS OBJECTION TO LANDLORD
CLAIMS (REDUCTION OF CERTAIN PARTIALLY INVALID CLAIMS AND
DISALLOWANCE OF CERTAIN INVALID CLAIMS) (DOCKET NO. 10041);
NOTICE AND OBJECTION TO CLAIM - SIXTH OMNIBUS OBJECTION TO
CLAIMS (DISALLOWANCE OF CERTAIN INVALID UNLIQUIDATED CLAIMS
AND FIXING OF CERTAIN UNLIQUIDATED CLAIMS) (DOCKET NO. 10043);
NOTICE AND OBJECTION TO CLAIM - LIQUIDATING TRUST'S EIGHTEENTH
OMNIBUS OBJECTION TO CLAIMS FILED BY TAXING AUTHORITIES
(REDUCTION OF CERTAIN PARTIALLY INVALID CLAIMS; DISALLOWANCE
OF CERTAIN INVALID CLAIMS; DISALLOWANCE OF CERTAIN DUPLICATE
CLAIMS; RECLASSIFICATION OF CERTAIN CLAIMS; DISALLOWANCE OF
CERTAIN AMENDED OR SUPERSEDED CLAIMS; DISALLOWANCE OR
REDUCTION OF CERTAIN LATE FILED CLAIMS; DISALLOWANCE OF
CERTAIN INVALID CLAIMS; AND FIXING THE AMOUNT OF CERTAIN
CLAIMS) (DOCKET NO. 10062); OBJECTION TO CLAIM - LIQUIDATING
TRUST'S THIRTY-FIRST OMNIBUS OBJECTION TO CLAIMS (DISALLOWANCE
OF CERTAIN INVALID CLAIMS) AND NOTICE OF LIQUIDATING TRUST'S
THIRTIETH OMNIBUS OBJECTION TO CLAIMS (DISALLOWANCE OF CERTAIN
INVALID CLAIMS) (DOCKET NO. 11809); NOTICE AND OBJECTION TO
CLAIM - LIQUIDATING TRUST'S THIRTY-NINTH OMNIBUS OBJECTION TO
LANDLORD CLAIMS (REDUCTION OF CERTAIN INVALID CLAIMS-
MITIGATION). (DOCKET NO. 11850); NOTICE AND OBJECTION TO
CLAIM - LIQUIDATING TRUST'S FORTY-FIRST OMNIBUS OBJECTION TO
LANDLORD CLAIMS (REDUCTION OF CERTAIN INVALID CLAIMS-
MITIGATION); NOTICE AND OBJECTION TO CLAIM - LIQUIDATING
TRUST'S FORTY-FIRST OMNIBUS OBJECTION TO LANDLORD CLAIMS
(REDUCTION OF CERTAIN INVALID CLAIMS-MITIGATION); NOTICE AND
OBJECTION TO CLAIM - LIQUIDATING TRUST'S FORTY-SECOND OMNIBUS
OBJECTION TO LANDLORD CLAIMS (REDUCTION OF CERTAIN INVALID
CLAIMS-MITIGATION) (DOCKET NO. 11853)
BEFORE THE HONORABLE KEVIN R. HUENNEKENS,
UNITED STATES BANKRUPTCY JUDGE

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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

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1 THE COURT OFFICER: Judge Huennekens is presiding;
2 please be seated.

3 THE CLERK: Circuit City Stores, Incorporated, items
4 1 through 32 on proposed agenda.

5 MR. CAINE: Good morning, Your Honor, Andrew Caine.

6 THE COURT: Good morning, Mr. Caine.

7 MR. CAINE: Andrew Caine, Pachulski Stang Ziehl &
8 Jones, for the Liquidating Trust. I'm here with my co-counsel
9 David Tabakin of Tavenner & Beran, and Ms. Katie Bradshaw, the
10 general manager of the Trust.

11 I don't know if you heard, Your Honor, but Ms.
12 Tavenner's father passed away earlier this week, and the
13 service is today, so they are where they should be.

14 THE COURT: Very good. Of course, they're where they
15 should be.

16 MR. CAINE: Yes.

17 So we have a number of matters on the agenda, Your
18 Honor. We have the matters involving Mr. Pollack; that's the
19 Berkshire-Amherst matters and his motion to withdraw and
20 related matters, and that we have set first so that he can
21 move on.

22 And then we have some matters that were noted for a
23 substantive hearing; it turns out that only two of those are
24 going to go forward, the others are resolved or in the process
25 of resolution.

1 And then Mr. Tabakin gets to be initiated in going
2 through the agenda of the other claims matters.

3 THE COURT: There's nothing like setting in a
4 dispositive hearing; it focuses the mind and gets things
5 resolved, they say.

6 MR. CAINE: Yes.

7 THE COURT: Very good.

8 MR. CAINE: Yes, absolutely.

9 So the first matter is Mr. Pollack's motion --

10 THE COURT: All right.

11 MR. CAINE: -- to withdraw.

12 THE COURT: Very good. Good morning, Mr. Pollack.
13 I'm glad to see that the airline consented to fly today and
14 bring you here.

15 MR. POLLACK: They finally did, and since you
16 chastised me last time for not being able to find Richmond
17 anymore, I decided to stay on the plane.

18 Your Honor, this is -- first of all for the record,
19 David Pollack, Ballard Spahr, for -- I guess for Berkshire-
20 Amherst, although I'm a man without a client today. We set
21 forth in our motion to withdraw the investigation that we
22 performed in trying to find out who might be a client, who
23 owned the claim, and unfortunately, were unsuccessful. Just
24 briefly, this was an entity which was dissolved a couple of
25 years ago, as well as its parent.

1 We tracked down the friendly foreclosure of the
2 property to TD Bank. The lawyer who handled it is now a judge
3 in New Hampshire; we called his office. We tracked down the
4 buyer of the property and their lawyer, told them what was
5 going on. We then tried to get in touch with the people that
6 they then sold the property to. Nobody has gotten back to us;
7 nobody seems to know about the claim. The lawyers tell us it
8 wasn't mentioned at the time of the foreclosure sale.

9 I don't know who the claim belongs to under New
10 Hampshire law, whether it was transferred with the property or
11 not. And at this point, we don't have a client, and
12 therefore, we have filed the motion to withdraw as counsel.

13 THE COURT: All right, I assume, Mr. Caine, you don't
14 object to the motion?

15 MR. CAINE: No objection, Your Honor.

16 THE COURT: All right, very good. That motion is
17 granted.

18 MR. POLLACK: Thank you, Your Honor.

19 THE COURT: I reluctantly let you go because it's
20 always good to see you in Richmond. And I'm sorry that you
21 don't have a client, but I'm sure we'll find other reasons to
22 bring you back here. And I hope that your flight back to
23 Philadelphia is more pleasant than the one that brought you
24 here.

25 MR. POLLACK: Hopefully, less eventful; the

1 thunderstorms are still moving through.

2 THE COURT: All right, very good.

3 MR. POLLACK: Thank you.

4 THE COURT: And you're excused, although --

5 MR. POLLACK: Great.

6 THE COURT: -- you're more than happy to stay for the
7 rest of this wonderful presentation this morning.

8 MR. POLLACK: Thank you, Your Honor.

9 THE COURT: All right.

10 MR. CAINE: It's a rare congregation of the Dodger
11 fans here, Your Honor, with Mr. Pollack.

12 THE COURT: I was going to say, this year
13 it's -- pretty sure pray for rain, right? Anyway, but glad to
14 see that he was supported last night.

15 MR. CAINE: Yes.

16 So the other matters on the agenda that relate to the
17 Berkshire-Amherst adversary proceeding are the motions for
18 summary judgment that Mr. Pollack's firm and the Trust filed
19 on this issue of whether you apply the cap before or after the
20 offset of the tenant improvement allowance, and then the Trust
21 subsequently filed an amended motion for summary judgment
22 which addresses all of the issues in the case, so that when
23 that motion is heard, we can get a judgment that is a complete
24 resolution, and not just a resolution of the legal issue.

25 Those were all noticed for today because Mr. Pollack

1 was seeking to withdraw, and even though he didn't have a
2 client, we agreed to postpone all of that until the next
3 omnibus hearing so if someone does show up and want to oppose,
4 they have the opportunity to oppose. But otherwise, all of
5 that will go forward at the next omnibus hearing, and the
6 matter should be resolved.

7 THE COURT: All right, very good.

8 MR. CAINE: And the resolution will mean that the
9 claims are disallowed by the offset, and the Trust would end
10 up with a judgment that it won't be able to collect for the
11 balance.

12 THE COURT: All right, well, yes, we'll see if we do
13 have anybody that shows up. It's a very interesting legal
14 issue.

15 MR. CAINE: Yes.

16 THE COURT: But otherwise, will go by default.

17 MR. CAINE: Yes, thank you, Your Honor.

18 The next matters on the agenda are the matters for
19 substantive hearing. And the -- is it 5 and 6?

20 MR. TABAKIN: Yes, I believe so.

21 MR. CAINE: Matters number 5 and 6 are not
22 specifically identified in the agenda as to whether they deal
23 with the Rossiter matter or the Monte Vista Crossing matters;
24 those are the two that involve the Liquidating Trust
25 fourteenth omnibus objection. And so unless Your Honor has a

1 preference, I'll handle the Rossiter matter --

2 THE COURT: That'll be fine.

3 MR. CAINE: -- first. Okay.

4 This is a matter, Your Honor, in which the claimant
5 filed a claim in the amount of 10,771 dollars as an
6 administrative claim. The Trust objected and, by this notice,
7 seeks to reduce that amount to \$7,780.27. Your Honor, we
8 wouldn't normally have taken up the Court's time with that
9 amount, but since we were here on all the other matters and
10 the amounts don't seem to be supported by the claim, we've
11 objected to them and wish to go forward.

12 Ms. Bradshaw is here, Your Honor. If called to
13 testify, she would testify that after review of the claim and
14 the debtors' books and records, that there isn't sufficient
15 evidence of the damages for a cleanup of debris on the
16 property and repair of a chain link rolling gate, or the
17 debtor or the Trust's obligation to pay for those damages, and
18 that explains the difference in the amount of the claim and
19 the amount that the Trust is seeking in final resolution of
20 the claim.

21 Your Honor, Ms. Bradshaw would also testify to the
22 chain of documentation, the maintenance of the debtors'
23 records in order to establish their authenticity, and the
24 business hearsay exception. And as I have mentioned before in
25 these hearings, that presentation would establish the

1 reliability of the records and the processes and checks and
2 double-checks followed by the Circuit City accounting
3 department, and subsequently the Trust after the inception of
4 the Trust to ensure the continued reliability of those
5 records, and the maintenance of them in a reliable fashion.

6 So Your Honor, we ask that this claim be reduced to
7 the \$7,780.27 as noticed.

8 THE COURT: Does any party wish to be heard in
9 connection with the claim, or wish to examine the proffered
10 witness?

11 All right, there being no objection, your objection
12 will be sustained to the claim and the claim amount will be
13 reduced per the trustee's request.

14 MR. CAINE: Thank you, Your Honor, we'll submit an
15 order.

16 THE COURT: Please do.

17 MR. CAINE: The next matter, Your Honor, also
18 regarding the Liquidating Trust fourteenth omnibus objection
19 to claims, claim number 4050 of Monte Vista Crossings. Your
20 Honor, Monte Vista never did file opposition. We have set
21 this for a substantive hearing just for the cleanliness of
22 resolution. The claim was filed, in part, as a general
23 unsecured claim, 33,257 dollars, and as an administrative
24 claim in the amount of \$16,834.99.

25 The claim itself, Your Honor, demonstrates the

1 infirmity of the administrative claim and that the
2 reclassification sought by the Trust of the 16,834 dollar
3 figure to a general unsecured claim is appropriate, on the
4 last page of the claim, which is the evidence submitted by the
5 claimant of the property taxes. There is a copy of the
6 property tax bill, and the claimant has calculated clearly in
7 handwriting the \$16,834.99 as the number of days from the
8 beginning of the tax period to the petition date. So it is
9 clear that all of the taxes that they are claiming are
10 administrative were, in fact, pre-petition taxes. And Ms.
11 Bradshaw, if called to testify, would also testify that the
12 debtors' records reflect that these are pre-petition taxes
13 and, as a result, the reclassification sought by the Trust is
14 appropriate. And the Trust seeks that order from the Court.

15 THE COURT: All right, does any party wish to be
16 heard in connection with the Monte Vista claim or wish to
17 examine the proffered witness?

18 All right, there being no objection, the -- or
19 response rather, the objection will be sustained, and the
20 claim will be reclassified as a general unsecured claim.

21 MR. CAINE: Thank you, Your Honor, and we'll submit
22 an order on that matter.

23 THE COURT: Please do.

24 MR. CAINE: Your Honor, the next matter on the agenda
25 was the Mallview Plaza matter in connection with the

1 Liquidating Trust fourth omnibus objection. We have resolved
2 that matter, and we have a signed settlement agreement, and so
3 there is no reason for going forward today.

4 THE COURT: All right.

5 MR. CAINE: The final, Your Honor, matter for a
6 substantive hearing involve the CC-Investors Trust 1995-1,
7 again, the Liquidating Trust's fourth omnibus objection to
8 claim. We are in contact with counsel and negotiating what is
9 now very close to a final resolution of this claim. I
10 anticipate that by the next omnibus hearing, it will have been
11 finally resolved.

12 THE COURT: Excellent.

13 MR. CAINE: Yeah, so there's no reason to go forward
14 on that today.

15 THE COURT: Very good.

16 MR. CAINE: And then, Your Honor, before I turn over
17 to Mr. Tabakin, I have prepared an update for you on the
18 claims as --

19 THE COURT: I would certainly appreciate --

20 MR. CAINE: -- they sit.

21 THE COURT: -- the update.

22 MR. CAINE: The change all involves the landlord
23 claims; as you will see in Mr. Tabakin's presentation, there
24 are a number of landlord claims that have been resolved.
25 We're now, after the orders coming from today, down to eighty-

1 eight landlord claims. And those claims add up to just over
2 sixty-two million dollars. Of those count an amount of
3 approximately twenty-five are within the realm of Capmark as
4 the real holder-in-interest, and those claims are also
5 approximately twenty-six percent of the general unsecured
6 amount still owing to landlords, almost sixteen million
7 dollars. We're very close to a resolution with Capmark as to
8 a format for resolving all the various claims. And should
9 that happen by the next omnibus hearing, which I certainly
10 hope, then we will be down to around fifty or so claims, and
11 that's certainly our goal. So we're getting there.

12 The total amount of claims, if you include the Old
13 Republic placeholder claims and the couple of tax claims that
14 are on the agenda, is 126 claims totaling 67.5 million
15 dollars.

16 The Trust is making another interim distribution
17 before the end of this month of four percent. So through that
18 distribution, the Trust will have distributed forty percent,
19 the holders of allowed general unsecured claims, and is
20 working diligently to try and make as much, and many more
21 distributions as we can.

22 THE COURT: Excellent. That's all -- that's very
23 good news.

24 MR. CAINE: Thank you, Your Honor.

25 THE COURT: All right, thank you.

1 Mr. Tabakin?

2 MR. TABAKIN: Good morning, Your Honor, David Tabakin
3 from Tavenner & Beran on behalf of the Circuit City Trust.

4 We can start, Your Honor, with agenda items number 9,
5 10, and 11. Those three items, we would request be continued
6 to August 17th.

7 THE COURT: They'll be continued.

8 MR. TABAKIN: Then on agenda item number 12, several
9 matters have been -- we request that they be continued to
10 August 17th, and one matter the claimant has agreed to have
11 the claim expunged, as per identified on Exhibit B, Your
12 Honor.

13 THE COURT: Very good.

14 MR. TABAKIN: On agenda item number 14, once again,
15 as identified on Exhibit B, several items can be continued:
16 one item will be -- has been resolved and can be removed from
17 the docket; one item has been resolved but the parties wish it
18 to remain on the docket for documentation purposes. All as
19 identified on Exhibit B, Your Honor.

20 THE COURT: All right, very good.

21 MR. TABAKIN: On agenda item number 15, all items on
22 that agenda item can be continued to August 17th, per Exhibit
23 B.

24 THE COURT: All right, very good. That'll be
25 continued.

1 MR. TABAKIN: Okay, Your Honor, on item 16, the Trust
2 has resolved certain claims as identified on Exhibit B, and
3 those can be removed from the docket, and the remaining claims
4 we'd like to be continued to August 17th, as per Exhibit B.

5 THE COURT: All right, the remaining claims will be
6 continued.

7 MR. TABAKIN: On item number 17, as per Exhibit B,
8 two claimants have agreed to have their claims expunged.
9 Several claimants have been resolved and can be removed, and
10 one will be removed from the docket, and another has been
11 resolved and requested to stay on the docket to be documented
12 and consummated. And then the remaining will be continued to
13 August 17th.

14 THE COURT: All right, very good.

15 MR. TABAKIN: On agenda item number 18, there are one
16 that can be resolved that the parties have asked to be
17 continued, and the remaining will be continued to August 17th,
18 as per Exhibit B.

19 THE COURT: All right, we've already taken care of
20 the two that Mr. Caine --

21 MR. TABAKIN: Caine.

22 THE COURT: -- addressed. All right, very good.

23 MR. TABAKIN: Yes, sir.

24 On item number 19, there are two items that have been
25 resolved and can be removed from the docket, and the remaining

1 will be adjourned to August 17th per Exhibit B, Your Honor.

2 THE COURT: All right.

3 MR. TABAKIN: Item number 20 deals with omnibus
4 seventeen, and with that several have been resolved and can be
5 removed. One has been resolved and it wishes to remain on the
6 docket for documentation purposes, and the remaining can be
7 continued to August 17th, Your Honor.

8 THE COURT: All right, very good.

9 MR. TABAKIN: Then, Your Honor, we can take numbers
10 21, 22, and 23 together. Those matters can all be continued,
11 per Exhibit B, to August 17th.

12 THE COURT: They'll be continued.

13 MR. TABAKIN: On item number 24, one matter has been
14 resolved, but wishes to remain on the docket to be documented
15 properly, and the remaining can be continued to August 17th.

16 THE COURT: All right, it'll be continued.

17 MR. TABAKIN: Thank you, Your Honor. And then items
18 25 and 26 can be taken together; all matters on those can be
19 continued to August 17th.

20 THE COURT: They'll be continued.

21 MR. TABAKIN: Item number 27, two matters have been
22 resolved and can be removed from the docket, and the
23 remaining, per Exhibit B, continued to August 17th.

24 THE COURT: All right, very good.

25 MR. TABAKIN: Thank you, Your Honor.

1 Item number 28, similar situation, several matters
2 have been resolved and can be removed, per Exhibit B, and the
3 remainder continued to August 17th.

4 THE COURT: That's the fortieth objection, right?

5 MR. TABAKIN: Yes, Your Honor.

6 THE COURT: All right, very good.

7 MR. TABAKIN: Then on the forty-first omnibus
8 objection, item number 29, two claimants have agreed to have
9 their claims expunged, one claim will be allowed, and per
10 agreement of the parties, one claim may be disallowed as
11 identified on Exhibit B. Then we have a number of items that
12 have been resolved and can be removed from the docket -- per
13 Exhibit B, there are several that have been resolved, but will
14 remain on the docket for documentation purposes, and the
15 remainder will be continued to August 17th.

16 THE COURT: All right, very good.

17 MR. TABAKIN: Thank you, Your Honor.

18 On number 30, we have one claim that has agreed -- or
19 one claimant has agreed to have its claim expunged, several
20 can be removed, several more have been resolved but will be
21 continued for documentation purposes, several have been
22 resolved and will be removed, per Exhibit B, and the remainder
23 continued to August 17th.

24 THE COURT: All right, the rest will be continued.

25 MR. TABAKIN: Per the forty-third omnibus objection,

1 item number 31, another claimant has agreed to have its claim
2 expunged, and a claimant has resolved its claim and can be
3 continued, for documentation purposes, and the remainder
4 continued to August 17th, per Exhibit B.

5 THE COURT: All right, very good.

6 MR. TABAKIN: And on the last item on the agenda,
7 Your Honor, three claimants have agreed to have their claims
8 expunged, there is one claimant, the matter has resolved and
9 can be removed, and the remaining can be continued to August
10 17th.

11 THE COURT: All right, they'll be continued.

12 MR. TABAKIN: And with that, Your Honor, we have
13 reached the end of the agenda for today.

14 THE COURT: All right, excellent. All right, well,
15 thank you very much. You can report back that you did a
16 stellar job today, and --

17 MR. TABAKIN: Thank you, Your Honor.

18 THE COURT: -- I know it was nip and tuck, but you
19 made it all the way through, and so that's great.

20 MR. TABAKIN: Thank you, Your Honor.

21 THE COURT: All right, thank you all.

22 THE COURT OFFICER: All rise. Court is now in
23 recess.

24 (Whereupon these proceedings were concluded at 11:22 AM)

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I N D E X

RULINGS:	PAGE	LINE
Motion to withdraw attorney on behalf	6	16
of Berkshire-Amherst granted		
Objection to claims of Rossiter sustained	10	12
and claim reduced		
Objection to Monte Vista claim sustained	11	19
and reclassified as a general unsecured claim		

1
2
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C E R T I F I C A T I O N

I, Dee Ventucci, the court approved transcriber, do
hereby certify the foregoing is a true and correct transcript
from the official electronic sound recording of the
proceedings in the above-entitled matter.



June 17, 2016

DEE VENTUCCI

DATE

	Andrew (2) 4:5,7	9:24 buyer (1) 6:4	claims (22) 5:2;8:9;10:19; 12:18,23,24;13:1,1, 4,8,10,12,13,13,14, 19;15:2,3,5,8;17:9; 18:7	13:22,25;14:7,13,20, 24;15:5,14,19,22; 16:2,8,12,16,20,24; 17:4,6,16,24;18:5, 11,14,18,21,22,22
\$	anticipate (1) 12:10	C	cleanliness (1) 10:21	Court's (1) 9:8
\$16,834.99 (2) 10:24;11:7	anymore (1) 5:17			
\$7,780.27 (2) 9:7;10:7	apply (1) 7:19	CAINE (30) 4:5,5,6,7,7,16;5:6, 8,11;6:13,15;7:10, 15:8:8,15,17,21;9:3; 10:14,17;11:21,24; 12:5,13,16,20,22; 13:24;15:20,21	cleanup (1) 9:15	Crossing (1) 8:23
A	appreciate (1) 12:19	calculated (1) 11:6	clear (1) 11:9	Crossings (1) 10:19
able (2) 5:16;8:10	appropriate (2) 11:3,14			
absolutely (1) 5:8	approximately (2) 13:3,5	called (3) 6:3;9:12;11:11	clearly (1) 11:6	D
accounting (1) 10:2	around (1) 13:10			
add (1) 13:1	assume (1) 6:13	can (26) 4:20;7:23;13:21; 14:4,15,16,22;15:3, 9,16,25;16:4,6,9,10, 15,18,18,22;17:2,12, 20;18:2,9,9,15	CLERK (1) 4:3	damages (2) 9:15,17
addressed (1) 15:22	August (17) 14:6,10,22;15:4, 13,17;16:1,7,11,15, 19,23;17:3,15,23; 18:4,9	cap (1) 7:19	client (5) 5:20,22;6:11,21; 8:2	date (1) 11:8
addresses (1) 7:22	authenticity (1) 9:23			
adjourned (1) 16:1	away (1) 4:12	Capmark (2) 13:3,7	close (2) 12:9;13:7	David (3) 4:9;5:19;14:2
administrative (4) 9:6;10:23;11:1,10	B	care (1) 15:19	co-counsel (1) 4:8	days (1) 11:7
adversary (1) 7:17				
again (2) 12:7;14:14	back (4) 6:6,22,22;18:15	case (1) 7:22	collect (1) 8:10	deal (1) 8:22
agenda (16) 4:4,17;5:2;7:16; 8:18,22;11:24; 13:14;14:4,8,14,21, 22;15:15;18:6,13				
ago (1) 5:25	balance (1) 8:11	CC-Investors (1) 12:6	coming (1) 12:25	deals (1) 16:3
agreed (8) 8:2;14:10;15:8; 17:8,18,19;18:1,7	Ballard (1) 5:19	certain (1) 15:2	complete (1) 7:23	debris (1) 9:15
agreement (2) 12:2;17:10	Bank (1) 6:2	certainly (3) 12:19;13:9,11	concluded (1) 18:24	debtor (1) 9:17
airline (1) 5:13	beginning (1) 11:8	chain (2) 9:16,22	congregation (1) 7:10	debtors' (3) 9:14,22;11:12
allowance (1) 7:20	behalf (1) 14:3	change (1) 12:22	connection (3) 10:9;11:16,25	decided (1) 5:17
allowed (2) 13:19;17:9	belongs (1) 6:9	chastised (1) 5:16	consented (1) 5:13	default (1) 8:16
almost (1) 13:6	Beran (2) 4:9;14:3	checks (1) 10:1	consummated (1) 15:12	demonstrates (1) 10:25
although (2) 5:20;7:4	Berkshire- (1) 5:19	Circuit (3) 4:3;10:2;14:3	contact (1) 12:8	department (1) 10:3
always (1) 6:20	Berkshire-Amherst (2) 4:19;7:17	City (3) 4:3;10:2;14:3	continued (29) 10:4;14:5,7,9,15, 22,25;15:4,6,12,17, 17;16:7,10,12,15,16, 19,20,23;17:3,15,21, 23,24;18:3,4,9,11	difference (1) 9:18
amended (1) 7:21	bill (1) 11:6	claim (33) 5:23;6:7,9;9:5,6, 10,13,18,20;10:6,9, 12,12,19,22,23,24, 25;11:1,3,4,16,20, 20;12:8,9;14:11; 17:9,10,18,19;18:1,2	copy (1) 11:5	diligently (1) 13:20
Amherst (1) 5:20	books (1) 9:14	claimant (8) 9:4;11:5,6;14:10; 17:19;18:1,2,8	counsel (2) 6:12;12:8	disallowed (2) 8:9;17:10
amount (10) 9:5,7,9,18,19; 10:12,24;13:2,6,12	Bradshaw (4) 4:9;9:12,21;11:11		count (1) 13:2	course (1) 4:14
amounts (1) 9:10	briefly (1) 5:24	claimants (4) 15:8,9;17:8;18:7	COURT (56) 4:1,6,14;5:3,7,10, 12;6:13,16,19;7:2,4, 6,9,12;8:7,12,16;9:2; 10:8,16;11:14,15,23; 12:4,12,15,19,21;	dissolved (1) 5:24
	bring (2) 5:14;6:22	claiming (1) 11:9		distributed (1) 13:18
	brought (1) 6:23			distribution (2) 13:16,18
	business (1)			distributions (1) 13:21
				docket (11) 14:17,18;15:3,10, 11,25;16:6,14,22; 17:12,14
				documentation (6) 9:22;14:18;16:6; 17:14,21;18:3

June 16, 2016

documented (2) 15:11;16:14	father (1) 4:12	20;13:5,19		landlords (1) 13:6
Dodger (1) 7:10	fifty (1) 13:10	gets (2) 5:1,4	I	last (4) 5:16;7:14;11:4; 18:6
dollar (1) 11:2	figure (1) 11:3	glad (2) 5:13;7:13	identified (6) 8:22;14:11,15,19; 15:2;17:11	law (1) 6:10
dollars (5) 9:5;10:23;13:2,7, 15	file (1) 10:20	goal (1) 13:11	improvement (1) 7:20	lawyer (2) 6:2,4
double-checks (1) 10:2	filed (5) 6:12;7:18,21;9:5; 10:22	Good (23) 4:5,6,14;5:7,12,12; 6:16,20;7:2;8:7; 12:15;13:23;14:2,13, 20,24;15:14,22;16:8, 24;17:6,16;18:5	inception (1) 10:3	lawyers (1) 6:7
down (4) 6:1,3;12:25;13:10	final (3) 9:19;12:5,9	granted (1) 6:17	include (1) 13:12	legal (2) 7:24;8:13
E	finally (2) 5:15;12:11	Great (2) 7:5;18:19	Incorporated (1) 4:3	less (1) 6:25
earlier (1) 4:12	find (3) 5:16,22;6:21	guess (1) 5:19	infirmary (1) 11:1	link (1) 9:16
eight (1) 13:1	fine (1) 9:2	H	initiated (1) 5:1	Liquidating (5) 4:8;8:24;10:18; 12:1,7
eighty- (1) 12:25	firm (1) 7:18	Hampshire (2) 6:3,10	interesting (1) 8:13	M
end (3) 8:9;13:17;18:13	first (4) 4:20;5:9,18;9:3	handle (1) 9:1	interim (1) 13:16	maintenance (2) 9:22;10:5
ensure (1) 10:4	flight (1) 6:22	handled (1) 6:2	investigation (1) 5:21	making (1) 13:16
entity (1) 5:24	fly (1) 5:13	handwriting (1) 11:7	involve (2) 8:24;12:6	Mallview (1) 11:25
establish (2) 9:23,25	focuses (1) 5:4	happen (1) 13:9	involves (1) 12:22	man (1) 5:20
even (1) 8:1	followed (1) 10:2	happy (1) 7:6	involving (1) 4:18	manager (1) 4:10
eventful (1) 6:25	foreclosure (2) 6:1,8	heard (4) 4:11;7:23;10:8; 11:16	issue (3) 7:19,24;8:14	many (1) 13:20
evidence (2) 9:15;11:4	format (1) 13:8	hearing (9) 4:23;5:4;8:3,5,19; 10:21;12:6,10;13:9	issues (1) 7:22	matter (14) 5:9;8:6,23;9:1,4; 10:17;11:22,24,25; 12:2,5;14:10;16:13; 18:8
examine (2) 10:9;11:17	forth (1) 5:21	hearings (1) 9:25	item (17) 14:8,14,16,17,21, 22;15:1,7,15,24; 16:3,13,21;17:1,8; 18:1,6	matters (17) 4:17,18,19,20,22; 5:2;7:16;8:18,18,21, 23;9:9;14:9;16:10, 18,21;17:1
Excellent (3) 12:12;13:22;18:14	fortieth (1) 17:4	hearsay (1) 9:24	items (8) 4:3;14:4,5,15,21; 15:24;16:17;17:11	may (1) 17:10
exception (1) 9:24	forty (1) 13:18	holder-in-interest (1) 13:4	J	mean (1) 8:8
excused (1) 7:4	forty-first (1) 17:7	holders (1) 13:19	job (1) 18:16	mentioned (2) 6:8;9:24
Exhibit (16) 14:11,15,19,22; 15:2,4,7,18;16:1,11, 23;17:2,11,13,22; 18:4	forty-third (1) 17:25	Honor (40) 4:5,11,18;5:18; 6:15,18;7:8,11;8:17, 25;9:4,7,12,21;10:6, 14,17,20,25;11:21, 24;12:5,16;13:24; 14:2,4,12,19;15:1; 16:1,7,9,17,25;17:5, 17;18:7,12,17,20	Jones (1) 4:8	might (1) 5:22
explains (1) 9:18	forward (5) 4:24;8:5;9:11; 12:3,13	hope (2) 6:22;13:10	Judge (2) 4:1;6:2	million (3) 13:2,6,14
expunged (6) 14:11;15:8;17:9, 19;18:2,8	fourth (2) 12:1,7	Hopefully (1) 6:25	judgment (4) 7:18,21,23;8:10	mind (1) 5:4
F	friendly (1) 6:1	Huennekens (1) 4:1	K	Monte (4) 8:23;10:19,20; 11:16
fact (1) 11:10	G		Katie (1) 4:9	month (1) 13:17
fans (1) 7:11	gate (1) 9:16		L	more (4)
fashion (1) 10:5	general (6) 4:10;10:22;11:3,		landlord (3) 12:22,24;13:1	

June 16, 2016

6:23;7:6;13:20; 17:20 morning (5) 4:5;6;5:12;7:7; 14:2 motion (8) 4:19;5:9,21;6:12, 14,16;7:21,23 motions (1) 7:17 move (1) 4:21 moving (1) 7:1 much (2) 13:20;18:15	office (1) 6:3 OFFICER (2) 4:1;18:22 offset (2) 7:20;8:9 Old (1) 13:12 omnibus (11) 8:3,5,25;10:18; 12:1,7,10;13:9;16:3; 17:7,25 once (1) 14:14 one (13) 6:23;14:10,16,17; 15:10,15;16:5,13; 17:9,10,18,19;18:8	6:5 per (15) 10:13;14:11,22; 15:4,7,18;16:1,11, 23;17:2,9,12,22,25; 18:4 percent (3) 13:5,17,18 performed (1) 5:22 period (1) 11:8 petition (1) 11:8 Philadelphia (1) 6:23 placeholder (1) 13:13 plane (1) 5:17 Plaza (1) 11:25 pleasant (1) 6:23 please (3) 4:2;10:16;11:23 point (1) 6:11 Pollack (11) 4:18;5:12,15,19; 6:18,25;7:3,5,8,11, 25 Pollack's (2) 5:9;7:18 postpone (1) 8:2 pray (1) 7:13 preference (1) 9:1 prepared (1) 12:17 pre-petition (2) 11:10,12 presentation (3) 7:7;9:25;12:23 presiding (1) 4:1 pretty (1) 7:13 proceeding (1) 7:17 proceedings (1) 18:24 process (1) 4:24 processes (1) 10:1 proffered (2) 10:9;11:17 properly (1) 16:15 property (7)	6:2,4,6,10;9:16; 11:5,6 proposed (1) 4:4 purposes (5) 14:18;16:6;17:14, 21;18:3	removed (12) 14:16;15:3,9,10, 25;16:5,22;17:2,12, 20,22;18:9 repair (1) 9:16 report (1) 18:15 Republic (1) 13:13 request (3) 10:13;14:5,9 requested (1) 15:11 resolution (8) 4:25;7:24,24;8:8; 9:19;10:22;12:9; 13:7 resolved (24) 4:24;5:5;8:6;12:1, 11,24;14:16,17;15:2, 9,11,16,25;16:4,5,14, 22;17:2,12,13,20,22; 18:2,8 resolving (1) 13:8 response (1) 11:19 rest (2) 7:7;17:24 result (1) 11:13 review (1) 9:13 Richmond (2) 5:16;6:20 right (32) 5:10;6:13,16;7:2, 9,13;8:7,12;10:11; 11:15,18;12:4; 13:25;14:20,24;15:5, 14,19,22;16:2,8,16, 24;17:4,6,16,24; 18:5,11,14,14,21 rise (1) 18:22 rolling (1) 9:16 Rossiter (2) 8:23;9:1
N	only (1) 4:23 opportunity (1) 8:4 oppose (2) 8:3,4 opposition (1) 10:20 order (4) 9:23;10:15;11:14, 22 orders (1) 12:25 others (1) 4:24 otherwise (2) 8:4,16 out (2) 4:23;5:22 over (2) 12:16;13:1 owing (1) 13:6 owned (1) 5:23		R	
negotiating (1) 12:8 New (2) 6:3,9 news (1) 13:23 next (7) 8:2,5,18;10:17; 11:24;12:10;13:9 night (1) 7:14 nip (1) 18:18 Nobody (2) 6:6,7 normally (1) 9:8 noted (1) 4:22 notice (1) 9:6 noticed (2) 7:25;10:7 number (20) 4:17;8:21;10:19; 11:7;12:24;14:4,8, 14,21;15:7,15,24; 16:3,13,21;17:1,8, 11,18;18:1 numbers (1) 16:9	P Pachulski (1) 4:7 page (1) 11:4 parent (1) 5:25 part (1) 10:22 parties (3) 14:17;15:16;17:10 party (2) 10:8;11:15 passed (1) 4:12 pay (1) 9:17 people (1)		rain (1) 7:13 rare (1) 7:10 rather (1) 11:19 reached (1) 18:13 real (1) 13:4 realm (1) 13:3 reason (2) 12:3,13 reasons (1) 6:21 recess (1) 18:23 reclassification (2) 11:2,13 reclassified (1) 11:20 record (1) 5:18 records (5) 9:14,23;10:1,5; 11:12 reduce (1) 9:7 reduced (2) 10:6,13 reflect (1) 11:12 regarding (1) 10:18 relate (1) 7:16 related (1) 4:20 reliability (2) 10:1,4 reliable (1) 10:5 reluctantly (1) 6:19 remain (4) 14:18;16:5,14; 17:14 remainder (4) 17:3,15,22;18:3 remaining (9) 15:3,5,12,17,25; 16:6,15,23;18:9	
O				S
object (1) 6:14 objected (2) 9:6,11 objection (12) 6:15;8:25;10:11, 11,18;11:18,19;12:1, 7;17:4,8,25 obligation (1) 9:17				sale (1) 6:8 seated (1) 4:2 seeking (2) 8:1;9:19 seeks (2) 9:7;11:14 seem (1) 9:10

seems (1) 6:7	12:6	transferred (1) 6:10	4:12	19,23;17:3,15,23; 18:4,10
service (1) 4:13	sufficient (1) 9:14	tried (1) 6:5	Whereupon (1) 18:24	18 (1) 15:15
set (3) 4:20;5:20;10:20	summary (2) 7:18,21	Trust (20) 4:8,10;7:18,20; 8:9,24;9:6,19;10:3,4, 18;11:2,13,14;12:1, 6;13:16,18;14:3; 15:1	wish (6) 9:11;10:8,9;11:15, 16;14:17	19 (1) 15:24
setting (1) 5:3	supported (2) 7:14;9:10	trustee's (1) 10:13	wishes (2) 16:5,14	1995-1 (1) 12:6
settlement (1) 12:2	sure (2) 6:21;7:13	Trust's (2) 9:17;12:7	withdraw (5) 4:19;5:11,21;6:12; 8:1	2
seventeen (1) 16:4	sustained (2) 10:12;11:19	try (1) 13:20	within (1) 13:3	20 (1) 16:3
several (9) 14:8,15;15:9;16:4; 17:1,13,19,20,21	T	trying (1) 5:22	without (1) 5:20	21 (1) 16:10
show (1) 8:3	Tabakin (29) 4:9;5:1;8:20; 12:17;14:1,2,2,8,14, 21;15:1,7,15,21,23; 16:3,9,13,17,21,25; 17:5,7,17,25;18:6, 12,17,20	tuck (1) 18:18	witness (2) 10:10;11:17	22 (1) 16:10
shows (1) 8:13	Tabakin's (1) 12:23	turn (1) 12:16	wonderful (1) 7:7	23 (1) 16:10
signed (1) 12:2	Tavener (2) 4:9;14:3	turns (1) 4:23	working (1) 13:20	24 (1) 16:13
similar (1) 17:1	Tavener's (1) 4:12	twenty-five (1) 13:3	Y	25 (1) 16:18
sit (1) 12:20	tax (3) 11:6,8;13:13	twenty-six (1) 13:5	year (1) 7:12	26 (1) 16:18
situation (1) 17:1	taxes (4) 11:5,9,10,12	two (7) 4:23;8:24;15:8,20, 24;16:21;17:8	years (1) 5:25	27 (1) 16:21
sixteen (1) 13:6	TD (1) 6:2	U	Z	28 (1) 17:1
sixty-two (1) 13:2	tenant (1) 7:20	under (1) 6:9	Ziehl (1) 4:7	29 (1) 17:8
sold (1) 6:6	testify (5) 9:13,13,21;11:11, 11	under (1) 6:9	1	30 (1) 17:18
someone (1) 8:3	That'll (2) 9:2;14:24	unfortunately (1) 5:23	1 (1) 4:4	31 (1) 18:1
sorry (1) 6:20	therefore (1) 6:12	unless (1) 8:25	10 (1) 14:5	32 (1) 4:4
sought (2) 11:2,13	though (1) 8:1	unsecured (5) 10:23;11:3,20; 13:5,19	10,771 (1) 9:5	33,257 (1) 10:23
Spahr (1) 5:19	three (2) 14:5;18:7	unsuccessful (1) 5:23	11 (1) 14:5	4
specifically (1) 8:22	thunderstorms (1) 7:1	up (5) 8:3,10,13;9:8;13:1	11:22 (1) 18:24	4050 (1) 10:19
Stang (1) 4:7	today (9) 4:13;5:13,20;7:25; 12:3,14,25;18:13,16	update (2) 12:17,21	12 (1) 14:8	5
start (1) 14:4	together (2) 16:10,18	V	126 (1) 13:14	5 (2) 8:19,21
stay (3) 5:17;7:6;15:11	told (1) 6:4	various (1) 13:8	14 (1) 14:14	6
stellar (1) 18:16	total (1) 13:12	Vista (4) 8:23;10:19,20; 11:16	15 (1) 14:21	6 (2) 8:19,21
still (2) 7:1;13:6	totaling (1) 13:14	W	16 (1) 15:1	67.5 (1) 13:14
Stores (1) 4:3	touch (1) 6:5	way (1) 18:19	16,834 (1) 11:2	9
submit (2) 10:14;11:21	tracked (2) 6:1,3	week (1)	17 (1) 15:7	9 (1)
submitted (1) 11:4			17th (17) 14:6,10,22;15:4, 13,17;16:1,7,11,15,	
subsequently (2) 7:21;10:3				
substantive (4) 4:23;8:19;10:21;				

June 16, 2016

14:4